SUPREME COURT, U. S.
FILED
JAN 27 1976
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of The United States

**October Term, 1975**

**No. 75-632**

ROBERT GORDON POSTELWAITE AND GARY LEE FRAZIER,

*Petitioners,*

v.

LEE BECHTOLD, SHERIFF OF WOOD COUNTY, WEST VIRGINIA, JON D. JACKSON AND IRA M. COINER, WARDEN OF THE WEST VIRGINIA PENITENTIARY,

*Respondents.*

## BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

CHAUNCEY H. BROWNING, JR.
*Attorney General*

BETTY L. CAPLAN
*Assistant Attorney General*

Counsel for Respondents
Room 26 E, State Capitol
Charleston, West Virginia 25305

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The respondents, Lee Bechtold, Sheriff of Wood County, West Virginia, Jon D. Jackson, and Ira M. Coiner, Warden of the West Virginia Penitentiary, respectfully pray that a writ of certiorari not be issued to review the decision of the Supreme Court of Appeals of West Virginia entered in this matter on February 4, 1975, in that this Court is without jurisdiction to hear the case.

### OPINION BELOW

The Supreme Court of Appeals of West Virginia rendered its opinion upon an appeal, which opinion is

unofficially reported in 212 S.E.2d 69. The opinion is set forth in full in the Appendix attached to the petition.

## JURISDICTION

The judgment of the Supreme Court of Appeals of West Virginia was entered on February 4, 1975. The Petition for Writ of Certiorari was filed with this Court on October 25, 1975, more than ninety days after the entry of the judgment. Therefore, pursuant to 28 U.S.C. § 2101(c), this Court is without jurisdiction to review the decision of the Supreme Court of Appeals of West Virginia.

Respectfully submitted,

LEE BECHTOLD, SHERIFF OF WOOD COUNTY, WEST VIRGINIA, JON D. JACKSON AND IRA M. COINER, WARDEN OF THE WEST VIRGINIA PENITENTIARY,
*Respondents*

*By Counsel*

CHAUNCEY H. BROWNING, JR.
*Attorney General*

BETTY L. CAPLAN
*Assistant Attorney General*

Counsel for Respondents
Room 26 E, State Capitol
Charleston, West Virginia 25305

## CERTIFICATE OF SERVICE

I, Betty L. Caplan, Assistant Attorney General, counsel for respondents, Lee Bechtold, Sheriff of Wood County, West Virginia, Jon D. Jackson and Ira M. Coiner, Warden of the West Virginia Penitentiary, do hereby certify that a true copy of the foregoing Brief in Opposition to the Petition for Writ of Certiorari was duly served on Leo Catsonis and Thomas L. Linkous, counsel for the petitioners, Robert Gordon Postelwaite and Gary Lee Frazier, by depositing the same in the United States Postal Service, first-class postage prepaid, this 23rd day of January, 1976, addressed as follows:

TO: Mr. Leo Catsonis
Mr. Thomas L. Linkous
Attorneys at Law
207 Security Building
Charleston, West Virginia 25301

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BETTY L. CAPLAN